IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 365 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT AGRICULTURAL UNIVERSITY - Petitioner(s)

Versus

HARCHANDBHAI S RABARI - Respondent(s)

==========

Appearance :

MR SA DESAI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.
MR DS CHAUHAN for Respondent No(s).: 1.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2005

ORAL JUDGMENT

1.0 The petitioner University has prayed to quash and set aside the award dated 31.03.1998 passed by the Labour

Court, Palanpur in Reference No. 41 of 1996, whereby the petitioner was directed to pay 50% of the back wages for the period between 09.10.1986 to 09.10.1991 from the date of the award.

2.0 The brief facts of the case are that the respondent herein was serving as a Milker with the petitioner University. On 09.10.1986 the respondent was terminated from the service. Against the said order, the respondent raised a dispute, which, ultimately, culminated into a reference before the Labour Court, Palanpur. The Labour Court, by impugned award, allowed the said reference as aforesaid. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In Para 6 of the impugned award, the Labour Court has recorded a finding that the respondent himself has stated in his cross-examination that he had voluntarily stopped coming to work. Moreover, during the pendency of the reference, the petitioner University had even permitted the respondent to resume his duties w.e.f 10.11.1991. However, the respondent has not resumed the duties. The aforesaid facts clearly establishes that the respondent was never

dismissed from the service, but, has voluntary abandoned the work. In spite of the above, the Labour Court has granted him back wages which is contrary to the evidence on record. Even otherwise, in view of the principle laid down by the Apex Court in the case of ***Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176*** and in the case of ***General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005 (5) S.C.C. pg.591]***, the respondent herein cannot be said to be entitled for back wages. Hence, the impugned award of the Labour Court is required to be quashed and set aside.

4.0 For the foregoing reasons, this petition is allowed. The impugned award dated 31.03.1998 passed by the Labour Court, Palanpur in Reference No. 41 of 1996 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *